

149 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

NorthWestern Corporation

Docket No. ES14-54-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued October 30, 2014)

1. On September 29, 2014, NorthWestern Corporation (NorthWestern) filed an application pursuant to section 204 of the Federal Power Act (FPA)¹ seeking Commission authorization to issue securities consisting of (1) a combination of up to \$400 million of equity securities and up to \$450 million of debt securities, or, in the alternative, (2) up to \$900 million of unsecured debt pursuant to a bridge credit facility, but, in no event, more than \$900 million outstanding at any one time.² We will grant the authorization as discussed below.

I. Background

2. NorthWestern is a corporation that owns and operates electric and natural gas transmission and distribution facilities. NorthWestern provides (1) wholesale and retail electric utility service in Montana, South Dakota, and Wyoming; and (2) natural gas distribution service in Montana, South Dakota, and Nebraska. NorthWestern also owns portions of electric generating facilities in Montana, South Dakota, Iowa, and North Dakota.

3. NorthWestern states that, on September 26, 2014, the Montana Public Service Commission (Montana Commission) issued a final order approving NorthWestern's acquisition of 11 hydroelectric facilities from PPL Montana, LLC for \$900 million

¹ 16 U.S.C. § 824c (2012).

² Application of NorthWestern Corporation for Authorization under Section 204 of the Federal Power Act to Issue Securities, Docket No. ES14-54-000 (Sept. 29, 2014) (Application).

(Hydro Transaction).³ The Commission authorized the Hydro Transaction by order issued on May 21, 2014.⁴ NorthWestern explains that the Montana Commission authorized the inclusion of \$870 million of the purchase price of the Hydro Transaction in NorthWestern's Montana jurisdictional rate base, which will result in an increase of approximately \$117 million in NorthWestern's annual retail revenue requirement.⁵ NorthWestern states that the Montana Commission also authorized it to issue, in an amount not to exceed in the aggregate \$900 million, (1) up to \$400 million worth of equity securities and \$450 million worth of secured debt securities, or (2) up to \$900 million of unsecured debt securities.⁶

II. Application

4. NorthWestern explains that it will finance the Hydro Transaction through operational cash flow, NorthWestern's existing unsecured credit facility,⁷ and the additional financing authority requested in the Application. Specifically, NorthWestern states that the proceeds from the sale of securities and issuance of the debt securities at issue here will be used to finance the Hydro Transaction's \$900 million purchase price. NorthWestern requests that the Commission grant the authorization requested in the Application for a period of two years from the effective date of the authorization and that the new authorization be in addition to NorthWestern's existing authority to issue securities.

A. Equity Securities and Secured Debt

5. NorthWestern seeks to secure long-term financing in the form of the equity securities and secured debt (collectively, Permanent Financing), before the closing of the Hydro Transaction. First, NorthWestern requests authority to issue up to \$400 million

³ In the Matter of the Application of NorthWestern Energy for Hydro Asset Purchase, Docket No. D2013.12.85 (Montana Public Service Commission Sept. 26, 2014).

⁴ See *NorthWestern Corp.*, 147 FERC ¶ 62,138 (2014).

⁵ Application at 2.

⁶ *Id.*

⁷ See *NorthWestern Corp.*, 144 FERC ¶ 62,203 (2013).

worth of equity securities, including common stock, preferred stock, and depository shares.⁸

6. Second, NorthWestern requests authority to issue up to \$450 million worth of secured debt securities, including first mortgage bonds, senior notes, or any other secured evidences of indebtedness.⁹ NorthWestern states that it may elect to issue first mortgage bonds as one or more series, with maturities between 2 and 50 years, and at interest rates that would be competitive fixed or variable rates based on market conditions for comparable securities. NorthWestern states that the interest rates for any secured debt securities will not exceed the 30-year Treasury rate as published at www.treasury.gov/resource-center/data-chart-center/Pages/index.aspx, plus a credit spread not to exceed 120 basis points.

B. Unsecured Debt

7. In the event it is unable to secure Permanent Financing, before the closing of the Hydro Transaction, NorthWestern requests authority to enter into a \$900 million 364-day senior bridge agreement (Bridge Facility). NorthWestern explains that the Bridge Facility is intended to be a back-up facility in case capital markets are inaccessible at the time of the closing of the Hydro Transaction. The Bridge Facility is intended to be available as a temporary single draw facility for the financing of the Hydro Transaction and the expenses associated with securing the Permanent Financing. NorthWestern states that, if accessed, the Bridge Facility would be due and payable within one year of borrowing. NorthWestern, however, does not expect to access the Bridge Facility for more than a few weeks, if at all.¹⁰

8. NorthWestern states that the interest rate for the Bridge Facility will be based on the one-month, three-month, or six-month London Interbank Offered Rate (LIBOR), as published at www.bankrate.com/rates/interest-rates/3-month-libor.aspx, in effect at the time of borrowing plus up to 325 basis points. The Bridge Facility requires that all proceeds from the subsequent Permanent Financing be used to pay down the advances under the Bridge Facility dollar-for-dollar, within three business days of receipt. NorthWestern states it intends to pay down the Bridge Facility on the same day as the closing of the Permanent Financing.¹¹ NorthWestern concludes that the total amount of

⁸ Application at 5-6.

⁹ *Id.* at 8-9.

¹⁰ *Id.* at 3.

¹¹ *Id.* n.7.

issued and outstanding financing under any combination of the Bridge Facility and Permanent Financing should not exceed \$900 million for more than a few hours during the two-year authorization period.

9. Furthermore, NorthWestern requests that the section 204(a) authorization for the Bridge Facility be terminated on the earlier of: (1) NorthWestern's completion of the Permanent Financing or (2) 90 days after the drawdown of the Bridge Facility. NorthWestern states that, if requested, it could submit an informational filing in this docket to inform the Commission of the termination of the Bridge Facility within five business days of the termination date.

C. Waiver Request

10. In order to maintain the greatest possible flexibility when issuing the securities described in the Application, NorthWestern requests waiver of the competitive bidding and negotiated placement requirements found at 18 C.F.R. § 34.2 (2014).¹²

III. Notice of Filing, Interventions, and Protests

11. Notice of the Application was published in the *Federal Register*, 79 Fed. Reg. 60,150 (2014), with interventions and protests due on or before October 20, 2014. None was filed.

IV. Discussion

12. FPA section 204(a) provides that requests for authorization to issue securities or to assume obligations or liabilities shall be granted if the Commission finds that the issuance: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.¹³

¹² Section 34.2 sets forth the Commission's requirements regarding the method of issuance. It states, in part, that utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a) (2014).

¹³ 16 U.S.C. § 824c(a) (2012).

13. The Commission has explained that, in reviewing filings under FPA section 204, “the Commission evaluates a utility’s financial viability based on a review of the financial statements submitted in the application and the utility’s interest coverage ratio. An interest coverage ratio is a measure of the utility’s ability to meet future debt and interest payments.”¹⁴ The interest coverage ratio is the sum of income before interest and income taxes divided by total interest expense.¹⁵ The Commission generally requires that FPA section 204 applicants demonstrate, on a *pro forma* basis in accordance with its regulations, that net income will equal or exceed twice total interest expense. This is a screen test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant’s ability to perform public utility service.¹⁶ Nevertheless, the Commission has stated that whether or not an applicant meets this interest coverage screen does not by itself determine whether the Commission will authorize or deny the application,¹⁷ and the Commission has approved section 204 applications that have not met this threshold.¹⁸

14. NorthWestern has filed, as Exhibits C, D, and E to the Application, *pro forma* financial statements that are based on its financial statements as of June 30, 2014. Under these *pro forma* financial statements, NorthWestern’s interest coverage ratio is 1.71, which is below the Commission’s interest coverage ratio benchmark of 2.0. NorthWestern argues, however, that even after undertaking the proposed issuances and assumptions of obligations and liabilities proposed in the Application, other factors indicate that its ability to provide service will not be impaired by the requested authorization.

15. First, NorthWestern states the Montana Commission has provided NorthWestern with approximately \$117 million of incremental annual revenue through increased retail rates, which become effective immediately upon closing of the Hydro Transaction. Second, NorthWestern states that the Montana Commission provided for recovery of

¹⁴ *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 15, *order on reh’g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

¹⁵ *Id.* n.15.

¹⁶ *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217 at P 16 (2009) (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*)).

¹⁷ *Id.* n.7.

¹⁸ *See, e.g., Aquila, Inc.*, 107 FERC ¶ 61,044, at P 15 (2004); *Westar*, 102 FERC ¶ 61,186 at P 15.

interest expense for the approved securities issuances. NorthWestern states that the additional revenues authorized by the Montana Commission will ensure its ability to meet its customers' public service needs as well as cover its debt obligations. Third, NorthWestern states that it continues to maintain investment grade ratings with Fitch Ratings, Moody's Investors Service, and Standard and Poor's Rating Services and, that it has continued to successfully access the capital markets at reasonable pricing. NorthWestern states that in December 2013, it issued \$65 million of Montana and South Dakota First Mortgage Bonds at a fixed interest rate of 4.85 percent, maturing in 2043. NorthWestern notes that, at the same time, it also issued \$35 million in Montana First Mortgage Bonds at a fixed rate of 3.99 percent, maturing in 2028. NorthWestern also notes that in April 2012, it entered into an Equity Distribution Agreement, under which it was able to offer and sell shares of its common stock from time-to-time, having an aggregate gross sales price of up to \$100 million. NorthWestern states that in March 2014, it successfully concluded these common stock sales pursuant to the Equity Distribution Agreement for net proceeds of \$98.7 million.

16. NorthWestern submits that after taking into consideration the Montana Commission-approved revenues from the Hydro Transaction and NorthWestern's ongoing financial strength, as reflected in its debt ratings and financial performance, the Commission should feel confident that NorthWestern will be able meet its customers' needs as well as cover its debt obligations.

17. As noted above, in section 204 filings, the Commission typically utilizes an interest coverage ratio calculation in its evaluation of a public utility's financial viability, and generally requires an applicant filing under FPA section 204 to demonstrate, on a *pro forma* basis, that net income will equal or exceed twice total interest expense.¹⁹ In this case, NorthWestern's *pro forma* interest coverage ratio is below 2.0. The other factors identified by NorthWestern, however, provide the Commission with an alternative basis upon which the Commission may conclude that the proposed issuances of debt will not impair NorthWestern's ability to service the proposed debt securities and to continue to provide service as a public utility.²⁰

18. We find, based on the facts set forth in the Application, that Applicants have demonstrated that Commission authorization of the proposed issuance of the equity and

¹⁹ See, e.g., *Startrans*, 122 FERC ¶ 61,253 at P 18.

²⁰ See *American Transmission Co. LLC*, 147 FERC ¶ 61,180, at P 15 (2014); *AEP Appalachian Transmission Co., Inc.*, 147 FERC ¶ 61,076, at PP 20-21 (2014); *ITC Great Plains, LLC*, 147 FERC ¶ 61,005, at PP 11-12 (2014); *Transource Missouri, LLC*, 145 FERC ¶ 61,146, at PP 21, 23 (2013).

debt securities and assumptions of obligations or liabilities related to the Bridge Facility and the Permanent Financing: (1) are for a lawful object, within NorthWestern's corporate purposes, compatible with the public interest, and necessary, appropriate for, or consistent with NorthWestern's proper performance as a public utility and will not impair NorthWestern's ability to perform such service; and (2) are reasonably necessary and appropriate for such purposes.

19. We grant the requested authorizations effective as of the date of this order. The authorizations for the Permanent Financing will terminate two years thereafter.

Authorization of the Bridge Facility will terminate upon the earlier of:

(1) NorthWestern's completion of the Permanent Financing; or (2) 90 days after the drawdown of the Bridge Facility. We also will grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to the Permanent Financing.

20. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.²¹ First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the asset and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility asset. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. NorthWestern states that it will comply with the *Westar* conditions, and we will condition authorization on its abiding by these restrictions.²²

The Commission orders:

(A) NorthWestern is hereby authorized to assume obligations in connection with the Bridge Facility of up to \$900 million at the interest rate stated in the body of this order. The Bridge Facility shall be terminated upon the earlier of: (i) NorthWestern's completion of the Permanent Financing; or (ii) 90 days after the drawdown of the Bridge Facility.

²¹ *Westar*, 102 FERC ¶ 61,186 at PP 20-21.

²² Application at 26.

(B) NorthWestern must submit an informational filing in this docket to inform the Commission of the termination of the Bridge Facility within five business days of the termination date.

(C) NorthWestern is hereby authorized to issue equity securities, that may consist of common stock, preferred stock, and depositary shares in an aggregate amount not to exceed \$400 million.

(D) Northwestern is hereby authorized to issue secured debt (including without limitation, one or more new series of first mortgage bonds to be issued under NorthWestern's mortgage deed of trust, senior notes, or other secured evidence of indebtedness) in an aggregate amount not to exceed \$450 million, at the interest rate stated in the body of this order.

(E) In no event will the total amount outstanding issued or assumed under the authorizations granted in this order exceed \$900 million at any one time, except as described above in Paragraph 8 for a period of a few hours.

(F) The authorizations for the equity securities and secured debt are granted effective as of the date of this order and terminate two years thereafter.

(G) The authorizations granted in this order are subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(H) The requested waiver of the Commission's competitive bidding or negotiated placement requirements under 18 C.F.R. § 34.2(a) (2014) is hereby granted.

(I) NorthWestern must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9 and 131.43 and 131.50 (2014), no later than 30 days after the sale or placement of long-term debt or equity securities or the entry into guarantees or assumption of liabilities.

(J) The authorizations granted in this order are without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(K) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.